

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	MB Docket No. 14-82
	)	
<b>PATRICK SULLIVAN</b>	)	FRN 0003749041, 0006119796,
(Assignor)	)	0006149843, 0017196064
	)	
and	)	Facility ID No. 146162
	)	
<b>LAKE BROADCASTING, INC.</b>	)	File No. BALFT-20120523ABY
(Assignee)	)	
	)	
Application for Consent to Assignment of	)	
License of FM Translator Station W238CE,	)	
Montgomery, Alabama	)	

To: Marlene H. Dortch, Secretary  
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

## SUMMARY

The Chief, Enforcement Bureau (Bureau), through her attorneys, respectfully submits the following Proposed Findings of Fact and Conclusions of Law in the above-captioned hearing matter.

Lake Broadcasting, Inc. (Lake) has failed to meet its burden of demonstrating, by a preponderance of the evidence, that (i) Michael S. Rice (Rice) – Lake’s president, director and sole shareholder – can be relied upon to be truthful, candid, and forthcoming in his dealings with the Commission, and to comply in all other respects with the Commission’s rules, regulations, and policies; and/or (ii) Rice has not been rehabilitated from the sexual crimes against children for which he was convicted to an extent that promotes confidence that he will refrain from engaging in the behavior for which he was convicted or there exist the “extraordinary and compelling circumstances” to overcome the public interest concerns associated with Rice’s child sex abuse crimes.

First, Lake did not offer any evidence demonstrating that, despite Rice’s previous misrepresentation to, and lack of candor with, the Commission, he (and therefore, Lake) can now be relied upon to be truthful in their dealings with the Commission. On this basis alone, Lake has failed to establish that Rice (and therefore, Lake) is qualified to hold a Commission license.

Second, the evidentiary record demonstrates that Rice has not been rehabilitated from the crimes for which he was convicted. Among other things, the evidence establishes that (i) Rice suffers from at least four mental disorders, including pedophilia, a chronic and life-long sexual disorder from which he cannot be cured; (ii) Rice blames his offenses on involuntary medical conditions (*e.g.*, bipolar affective disorder, dysthymia, dissociative disorder, and alcohol abuse) for which he is not currently receiving any therapy or monitoring from a mental health provider;

(iii) Rice continues to drink alcohol despite it being a trigger for his criminal acts; (iv) the sex offender treatment Rice received while incarcerated was ineffective and insufficient; and (v) Rice still refuses to express contrition or take responsibility for his criminal actions.

Moreover, the evidence presented from local Missouri law enforcement demonstrates that Rice is at an elevated risk to reoffend. Specifically, Ms. Tamara Gremminger, a Probation and Parole Officer and Sex Offender Specialist with the Missouri Department of Corrections, Division of Probation and Parole, who regularly performs sex offender risk assessments and testifies frequently for the state of Missouri, concluded that Rice is very likely to reoffend. Ms. Gremminger based this conclusion on her over twenty years of experience with sex offender risk assessments and factors such as Rice's lack of regular employment, family or other close relationships, and his continued drinking. The Bureau's expert psychologist, Dr. Weitzl, who also works with local law enforcement, independently reached the same conclusion. Lake did not offer any evidence from local law enforcement to refute Ms. Gremminger's or Dr. Weitzl's testimony.

As a result, Lake has failed to meet its burden of demonstrating, by a preponderance of the evidence, that Rice (and therefore, Lake) is qualified to hold a Commission license. Therefore, the application of Patrick Sullivan for Consent to Assignment of the License of FM Translator Station W238CE, Montgomery, Alabama (Application) to Lake (and therefore, Rice) should be denied.

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## EB EXHIBIT LIST

### A. EB Direct Case Exhibits

Exhibit No.	Exhibit Description/Title	Date	No. of Pages
1	Testimony of Dr. Kimberly Weitzl	4/3/2017	27
2	Testimony of Tammy Gremminger	3/27/2017	9
3	Statement of Tammy Gremminger	11/16/2015	2
4	Missouri Department of Corrections Probation and Parole file relating to Michael Rice		34
5	Declaration of Tammy Gremminger Re Probation and Parole File	3/30/2017	1
6	Sex Offender Evaluation prepared by Dr. Kimberly Weitzl	3/14/2016	21
7	Vita of Dr. Kimberly Weitzl	1/2015	3
8	Psychological Evaluation of Michael Rice prepared by Dr. Duncan-Hively and Dr. Hively	9/18/1991	12
9	Psychological Evaluation of Michael Rice prepared by Dr. Duncan-Hively and Dr. Hively	11/22/2014	8
10	State of Missouri v. Michael Rice, Criminal Proceeding records	7/1994	18
11	Description and Treatment Contract, Mark Lee Robinson Abuse Prevention Program	1/22/00	4
12	Missouri Sex Offender Registry: Michael S. Rice	1/2015	23

**B. EB Official Notice Exhibits**

<b>Exhibit No.</b>	<b>Exhibit Description/Title</b>	<b>Date</b>	<b>No. of Pages</b>
1	Reference Copy of Assignment Application for AM Translator Station W238CE, Montgomery, Alabama from Patrick Sullivan, Assignor, to Lake Broadcasting, Inc., Assignee	5/23/2012	26
2	<i>Patrick Sullivan and Lake Broadcasting, Inc.,</i> Hearing Designation Order	5/23/2014	11
3	EB Request for Admissions	8/5/2014	32
4	Lake Response to EB Request for Admissions	8/15/2014	3
5	EB First Set of Interrogatories	8/5/2014	11
6	Lake Response to EB First Set of Interrogatories	8/15/2014	14
7	<i>Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Report, Order, and Policy Statement, 102 F.C.C.2d 1179 (1986) ("1986 Policy Statement")</i>	1/14/1986	36
8	<i>Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, 1 FCC Rcd 421 (1986)</i>	11/6/1986	8

9	<i>Policy Regarding Character Qualifications in Broadcast Licensing</i> , Policy Statement and Order, 5 FCC Rcd 3252 (1990) (“1990 Policy Statement”)	5/11/1990	5
10	<i>Policy Regarding Character Qualifications in Broadcast Licensing</i> Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991) (“1991 Policy Statement”)	5/24/1991	6
11	<i>Policy Regarding Character Qualifications in Broadcast Licensing</i> Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992) (“1992 Policy Statement”)	10/9/1992	8
12	<i>David Titus</i> , Initial Decision, 25 FCC Rcd 2390 (2010)	3/9/2010	10
13	<i>David Titus</i> , Decision, 29 FCC Rcd 14066 (2014)	11/6/2014	9
14	<i>Contemporary Media, Inc.</i> , Initial Decision, 12 FCC Rcd 14254 (ALJ 1997) (“CMI Initial Decision”)	8/21/1997	40
15	<i>Contemporary Media, Inc.</i> , Decision, 13 FCC Rcd 14437 (1998) (“CMI Decision”)	6/25/1998	16
16	<i>Contemporary Media, Inc. v. FCC</i> , 212 F.3d 187 (D.C. Cir. 2000)	6/16/2000	13



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## PROPOSED FINDINGS OF FACT

### I. INTRODUCTION

#### A. Procedural Background

1. On May 23, 2014, pursuant to delegated authority, the Commission's Media Bureau released a Hearing Designation Order (HDO) designating the question of whether the application of Patrick Sullivan for Consent to Assignment of the License of FM Translator Station W238CE, Montgomery, Alabama (Application) to Lake Broadcasting, Inc. (Lake) should be granted. (*See* EB Official Notice Exh. 2.)<sup>1</sup> The Media Bureau designated the Application for hearing because Lake's president, director and sole shareholder, Michael S. Rice (Rice), is a convicted felon who previously held radio station authorizations that were revoked on the basis of his felony convictions and misrepresentation to, and lack of candor before, the Commission. (*See* EB Official Notice Exhs. 14-16.)<sup>2</sup>

2. The HDO directs that the Presiding Judge "evaluate whether Rice has been rehabilitated to an extent that the Commission can be fully confident Rice will refrain from engaging in the kind of behavior for which he was convicted" and whether, Rice (and therefore, Lake) can be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission and comply in all other respects with the Commission's rules, regulations, and

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<sup>1</sup> *Patrick Sullivan and Lake Broadcasting, Inc.*, Hearing Designation Order, 29 FCC Rcd 5421 (MB 2014) (HDO).

<sup>2</sup> *Contemporary Media, Inc.*, Initial Decision, 12 FCC Rcd 14254 (ALJ 1997); *Contemporary Media, Inc.*, Decision, 13 FCC Rcd 14437 (1998), *recon. denied*, Order, 14 FCC Rcd 8790 (1999), *aff'd sub nom, Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001).

policies. (EB Official Notice Exh. 2 at 5429, ¶ 21.) Accordingly, the HDO designated for hearing the following issues:

- (a) To determine the effects, if any, of Michael S. Rice's felony convictions on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee;
- (b) To determine the effects, if any, of the misrepresentation and lack of candor by Michael S. Rice's broadcast companies on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee;
- (c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Michael S. Rice and/or Lake Broadcasting, Inc., is qualified to be a Commission licensee; and
- (d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned Application for consent to the assignment of license for Station W238CE should be granted. (EB Official Notice Exh. 2 at 5429, ¶ 22.)

3. The HDO placed the burden of proceeding and the burden of proof on the applicants, Sullivan and Lake. (*See* EB Official Notice Exh. 2 at 5430, ¶ 28.) Subsequent to the issuance of the HDO, the Commission, in an unrelated proceeding, recognized that after a person or entity is convicted of a felony, the burden of showing rehabilitation falls on the felon. (*See* EB Official Notice Exh. 13 at 14071, ¶ 13.)<sup>3</sup>

4. The parties exchanged their affirmative direct case exhibits and the written direct testimony of each of their witnesses on April 3, 2017. (*See Prehearing Order*, FCC 17M-08 (ALJ, rel. Feb. 28, 2017).) Lake/Rice identified two witnesses they intended to present at the hearing: Michael Rice and Dr. Duncan-Hively, Lake's expert psychologist. (*See Direct Case Exhibits of Lake Broadcasting, Inc. ("LB")*, filed Apr. 3, 2017, at Exhs. 1-3.) The Enforcement Bureau (Bureau) identified two witnesses it intended to present at the hearing: Dr. Kimberly

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<sup>3</sup> *David Titus*, Decision, 29 FCC Rcd 14066, 14071 (2014).

Weitl, a licensed psychologist in Missouri with expertise in assessing the risk factors of convicted male sex offenders and Ms. Tamara Gremminger, a Probation and Parole Officer and Sex Offender Specialist with the Missouri Department of Corrections, Division of Probation and Parole. (See Enforcement Bureau's Direct Case Exhibits, filed Apr. 3, 2017, at Exhs. 1-2.) Dr. Weitl routinely works with local law enforcement to assess the risk posed by sex offenders for the state of Missouri. (See EB Direct Case Exh. 1: Written Testimony of Dr. Kimberley Weitl (Weitl Direct) at ¶¶ 2-7.)

5. On April 21, 2017, Lake filed a motion *in limine* objecting to the acceptance of Ms. Gremminger as an expert witness for the Bureau. (See Lake Broadcasting, Inc. Motion in Limine to Disqualify Tamara Gremminger as an Expert and Reject her Direct Case Testimony, filed Apr. 21, 2017.) The Presiding Judge initially denied this motion as premature. (See Order, FCC 17M-22 (ALJ, rel. Apr. 27, 2017).) Lake renewed this motion during the hearing as part of the *voir dire* conducted by Lake's counsel and the Presiding Judge. (See Hearing Transcript (Hearing Tr.) at 446:20—447:16; 537:18-539:5.)

6. The record reflects that Ms. Gremminger has worked in local law enforcement in Missouri for more than 20 years, and has had extensive training and experience in performing sex offender risk assessments. (See EB Direct Case Exh. 2: Written Direct Testimony of Tammy Gremminger (Gremminger Written Direct) at ¶¶ 1-2; Hearing Tr. (Gremminger) at 448:17-449:5; 451:18-485:4.) The Presiding Judge accepted Ms. Gremminger's testimony into the record notwithstanding the disposition of Lake's renewed motion. (See Hearing Tr. at 539:4-5.)

7. On August 15, 2017, the Presiding Judge confirmed that he would accept Ms. Gremminger as a qualified expert witness in assessing the re-offense risk of sex offenders such as Rice. (See Order, FCC 17M-29 (ALJ, rel. Aug. 15, 2017).)

8. Pursuant to *Order*, FCC 17M-22, the hearing commenced on May 3, 2017. (*See* Hearing Tr. at 162:3-6.) The hearing concluded on May 5, 2017. (*See id.* at 676:9-17.)

**B. The Commission Revoked Rice's Prior Licenses After He Was Convicted For Sex Crimes Against Children**

9. On July 5, 1994, Rice was convicted in St. Charles, Missouri of crimes involving oral sex with a male child between the ages of 14 and 16 years old, two counts of Deviate Sexual Assault in the Second Degree, involving oral sex with a male child 16 years old, and four counts of Sodomy involving deviate sexual intercourse with a male child under the age of 14 years old. (*See* EB Direct Case Exh. 10 at 2-6.) The misconduct for which Rice was convicted involved five children. (*See* EB Official Notice Exh. 2 at 2, ¶ 3.) Rice was sentenced to a total of 84 years in prison. (*See* EB Direct Exh. 10 at 1-21.) Because his sentences ran concurrently, Rice was incarcerated for just over five years. (*See* Lake Direct Case Exh. 1 at 2.)

10. Rice groomed neighborhood children for sex by luring them into his house, giving them alcohol and marijuana, buying them expensive gifts, and driving them around in his car, a red corvette. (*See* EB Direct Case Exh. 4 at 12-13; *see also* Hearing Tr. (Rice) at 227:10-23.) Rice molested one of the children in "one of the radio relay stations" that he owned. (EB Direct Case Exh. 4 at 12-13.) He preferred children between the ages of 12 to 17. (*See* EB Direct Case Exh. 4 at 12, 25.) One of the victims was as young as 11 years old at the beginning of Rice's sexual activity with him. (*See* EB Direct Case Exh. 4 at 12, 29.) Rice admitted to having a continuing sexual relationship with this child for five years, having sex with him several times a week. (*See* Hearing Tr. (Rice) at 292:24-293:20.) Rice molested many more children than the ones as to whom he was formally charged. (*See* EB Direct Case Exh. 4 at 12, 25.)

11. An August 27, 1996 police investigation report that is part of the files maintained by the Missouri Department of Corrections, Division of Parole and Probation concerning Rice

states that his victims reported being molested by Mr. Rice as early as 1976. (*See* EB Direct Case Exh. 4 at 20.) This report also states that some of Rice's victims were younger than 13 years old. (*See* EB Direct Case Exh. 4 at 12-13, 29.) Rice has been described as the "Pied Piper of children" who "molested during the last several decades many more children than we will ever know." (EB Direct Case Exh. 4 at 21.)

12. Rice was released from prison by the Missouri Department of Corrections in December 1999. (*See* Lake Direct Case Exh. 1 at 2.) Rice was on probation for just over 2.5 years. (*See* Lake Direct Case Exh. 1 at 2.) Pursuant to Missouri law, his name remains on the Missouri Sex Offender Registry. (*See* EB Direct Case Exh. 12; Hearing Tr. (Rice) at 179:5-10.)

13. At the time of his felony conviction, Rice held several Commission licenses. (*See* EB Official Notice Exh. 14.) In 1997, following an administrative hearing, the Commission revoked Rice's licenses as a result of the egregious nature of Rice's felony convictions for sex abuse of children. (*See* EB Official Notice Exhs. 14 and 15.) The United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's revocation of Rice's licenses. (*See* EB Official Notice Exh. 16.)

## **II. LAKE DID NOT DEMONSTRATE THAT RICE CAN BE TRUTHFUL WITH THE COMMISSION**

14. Lake did not offer any evidence demonstrating that, despite Rice's previous misrepresentation to, and lack of candor with, the Commission, he (and therefore, Lake) can now be truthful in their dealings with the Commission. (*See, e.g.,* Lake Direct Case Exh. 1: Written Direct Testimony of Michael S. Rice (Rice Written Direct); *see also* Hearing Tr. (Rice) at 169:7-353:15.)

### **III. LAKE DID NOT DEMONSTRATE THAT RICE HAS BEEN REHABILITATED**

#### **A. Lake Did Not Adduce Sufficient Evidence Of The Measures Rice Has Taken To Prevent Future Misconduct**

15. Rice blamed his illicit sexual encounters with children on, *inter alia*, his abuse of alcohol. (See, e.g., Rice Written Direct at 2; Hearing Tr. (Rice) at 209:6-9.) Rice admitted that although he has been diagnosed as an “alcohol abuser” (Hearing Tr. (Rice) at 210:11-13), he continues to drink. (See, e.g., Hearing Tr. (Rice) at 209:10-23.)

16. Rice admitted that he is not now being treated for alcohol abuse or attending anything like Alcoholics Anonymous. (See Hearing Tr. (Rice) at 299:22-24; 300:12-15.) There is also nothing medically preventing him from drinking. (See Hearing Tr. (Rice) at 350:15-24.)

17. Rice blamed his offenses on “involuntary medical conditions (bipolar affective disorder, dysthymia, dissociative disorder, and alcohol abuse)” and summarily declared himself to have been “successfully treated.” (Rice Written Direct at 2; see Hearing Tr. (Rice) at 221:24-222:12; 223:13-15; 224:16-225:11.) Rice also blamed his offenses on some other “undiagnosed mental condition.” (Hearing Tr. (Rice) at 223:4-15.) Rice further claimed that he suffered from a multiple personality disorder (see Hearing Tr. (Rice) at 294:12-295:3-15) and that it was this alternate personality that engaged in sexual activity with children, not the personality he currently possesses. (See Hearing Tr. (Rice) at 295:9-12; 296:3-6; 297:1-3, 10-12.)

18. Rice admitted that he is not receiving any therapy or monitoring from a mental health provider for any of these conditions. (See Hearing Tr. (Rice) at 298:18-20; 299:6-8.)

19. Rice did not present any evidence that he received specific sex offender therapy from any mental health provider after the completion of his parole. (See, e.g., Lake Direct Case Exhibit 3, Appendices A, B and C.)

20. The psychological treatment Rice received from Dr. Stillings was for “mental illness” unrelated to pedophilia. (*See* Lake Direct Case Exh. 3, Appendices B and C; Hearing Tr. (Duncan-Hively) at 383:14-384:2.) Dr. Stillings did not address Rice’s deviant sexual interests because he failed to diagnose Rice’s underlying sexually deviant disorders. (*See* EB Official Notice Exh. 1 at 20.)

**B. Lake Did Not Offer Admissible Evidence Concerning Rice’s Reputation For Good Character In The Community**

21. Lake offered six letters of reference from various “acquaintances and business associates of Mr. Rice.” (Lake Direct Case Exh. 1, App. C.) These letters contain almost identical language reflecting that Mr. Rice only socializes with “age-appropriate people.” (Lake Direct Case Exh. 1, App. C.)

22. Only two of Lake’s six letters were submitted by persons who live in Missouri. (*See* Lake Direct Case Exh. 1, App. C.) None of these six letters reflect that any of the authors live within Rice’s community. (*See id.*)

23. When Lake submitted its evidence, these letters were not signed under a declaration of perjury. (*See* Lake Direct Case Exh. 1, App. C.)

24. The authors of these letters did not offer testimony at the hearing. (*See* Hearing Tr. at 174:16-18; *see also id.* at 162:22-163:5)

**C. Rice Did Not Express Contrition or Take Responsibility For His Crimes**

25. In determining whether a sex offender has been rehabilitated, local law enforcement in Missouri, and those specializing in assessing a sex offender’s risk to re-offend, believe a key factor is whether the offender has admitted responsibility for his actions and/or shown remorse. (*See* EB Direct Case Exh. No. 4 at 23 (recognizing that admission of guilt and showing of remorse are “the two most important ingredients for successful probation or clemency”); EB



Direct Case Exh. 2: Written Direct Testimony of Tammy Gremminger (Gremminger Direct) at ¶ 6.)

26. Rice refused to plead guilty to the crimes for which he was convicted; he forced the state of Missouri to go to trial. (*See* Hearing Tr. (Rice) at 195:3-12.)

27. Rice admitted that the Missouri Department of Corrections opposed his early release from prison because he did not plead guilty, did not admit his guilt, or show remorse. (*See* Hearing Tr. (Rice) at 198:12-18.)

28. At the hearing, Rice maintained that he was not guilty of all of the crimes for which he was convicted. (*See* Hearing Tr. (Rice) at 200:15-201:1, and 208:8-13.)

29. Rice further excused his offending behavior by blaming his victims, asserting that he had been manipulated by them. (*See* Hearing Tr. (Rice) at 288:10-17; 289:1-5.).

30. Rice continued to maintain that all of his victims consented to having sex with him. (*See* Hearing Tr. (Rice) at 232:23-233:2; *see also* EB Direct Case Exh. 4 at 26 (Rice's Parole and Probation Investigation Report dated August 23, 1994) stating that Rice told the investigator that "no force was involved – they were willing participants," "all the victims were more mature in their activities than typical of their age," and "most of them had been involved in criminal behavior.")

31. Rice also accused his victims of lying about the circumstances of his offenses against them. (*See* Hearing Tr. at 249:5-8.) Rice disputed having sex with a 9-year old victim and accused the 11-year old victim of lying about his age. (*See* Hearing Tr. at 272:9-25-273:4; 282:18-283:7.)

32. Rice denied having sex with one of the victims he was convicted of molesting, claiming that the parents forced the child to falsify the allegations in order to make a civil claim for money against Rice. (*See* Hearing Tr. (Rice) at 284:22-285:6.)

33. Rice further denied making a statement during a June 6, 2000 polygraph pre-test interview that he began offending in his early thirties (early 1970s) and that there were a “good number” of victims (*see* EB Direct Case Exhibit 4 at 4), claiming that the polygraph technician “confused him with someone else,” even though the report has his name and file number on it. (Hearing Tr. (Rice) at 312:5-8; 314:2-18.) Rice also maintained that while the polygraph technician correctly recorded the conclusion that Rice had passed the polygraph, he incorrectly recorded the admission from Rice as to the time period when his offenses began and the numbers of his victims. (*See* Hearing Tr. (Rice) at 317:8-10.) Rice offered no explanation for the technician’s alleged “mistakes.” (*See* Hearing Tr. (Rice) at 314:19-25.)

34. Notwithstanding that Rice’s polygraph report stated that the test should address “certain disclosure issues” and that the “concern was the extent and nature of any activities Mr. Rice has engaged in with teenage boys in the past,” (EB Direct Case Exh. 4 at 4), Rice continued to deny that he was referred for a polygraph test because the treatment providers at the Missouri Department of Corrections believed that he had a more extensive history of offending than he was admitting to. (*See* Hearing Tr. (Rice) at 318:9-16.)

**D. Lake’s Expert Medical Witness Was Not An Expert In The Evaluation Of Sex Offenders And Her Conclusion Concerning Rice’s Rehabilitation Is Based On An Inaccurate Recitation of Test Results**

35. Lake’s expert, Dr. Ann Dell Duncan-Hively, is a clinical psychologist whose specialty centers on “trauma and transition.” (*See* Hearing Tr. at (Duncan-Hively) 366:14-15;

387:23-25) and not on the evaluation or treatment of sex offenders. (*See* Hearing Tr. (Duncan-Hively) at 393:17-394:33; 396:17-20 (sex offender evaluation comprises 6-8% of her practice).)

36. Dr. Duncan-Hively admitted that she is not an expert in the evaluation of sex offenders. (*See* Hearing Tr. (Duncan-Hively) at 397:4-13.) She also admitted that the Bureau's expert, Dr. Kimberly Weitzl, "is eminently more qualified" than she is in the evaluation of sex offenders. (Hearing Tr. (Duncan-Hively) at 397:4-13.) She further admitted that she has not worked in the trenches the way Dr. Weitzl has nor "worked in the actual MoSOP program" (*Id.*) that Lake relies on so heavily.

37. In her assessment of Rice (Lake Direct Case Exh. 3, App. C), Dr. Duncan-Hively ignored Rice's admission during his June 6, 2000 polygraph examination that he has been offending since his early thirties and that he had molested "a good number of victims over the years." (EB Direct Case Exh. 4 at 4.)

38. Dr. Duncan-Hively also trivialized the seriousness of Rice's criminal behavior by blaming it on a vast array of "psychological" and "environmental conditions," including virtually anything other than his lifelong sexual orientation towards young boys. (*See, e.g.*, Hearing Tr. (Duncan-Hively) at 401:11-18.) She testified that he suffered from "delayed adolescence," that he was "[p]robably . . . gay initially, but couldn't allow himself to be gay because, c'mon, it's the seventies and the eighties . . . [a]nd so his sexual activity then involved the boys who were at his house." (Hearing Tr. (Duncan-Hively) at 401:13-18.) Dr. Duncan-Hively also blamed Rice's behavior on an unspecified "mental illness;" a "psychotic break;" the fact that he had access to "an available, curious 13-year old" where he engaged in an "I'll touch yours if you touch mine" scenario. (Hearing Tr. (Duncan-Hively) at 403:24-404:2). Dr. Duncan-Hively further blamed Rice's behavior on: a "cocktail" of psychosis; "not thinking straight;" "alcohol;" "extreme

fatigue;" a family history of mental illness; "Asperger's, geekiness," and a "lack of social skills." (Hearing Tr. (Duncan-Hively) at 400:23-25; 404:12-16.)

39. Dr. Duncan-Hively never provided a causative nexus or an answer as to the relationship between having each of these purported problems and being sexually attracted to young boys. (*See* Hearing Tr. (Duncan-Hively) at 401:2-19.) Instead, Dr. Duncan-Hively trivialized Rice's sexual misconduct, likening it to the antics of a puppy in a basket of puppies. (*See* Hearing Tr. (Duncan-Hively) at 436:5-23.)

40. Although Dr. Duncan-Hively admitted that Rice suffered from pedophilia at the time of his criminal activity and acknowledged that he would have "fit under the general category of child molester" (Hearing Tr. (Duncan-Hively) at 419:13-19), she concluded that Rice no longer qualifies as a pedophile simply because of his age. (*See, e.g.*, Hearing Tr. (Duncan-Hively) at 419:20-25.) This conclusion is at odds with the medically accepted definition of "Pedophilia" as set forth in the Diagnostic Statistical Manual (5<sup>th</sup> ed.) (DSM), which states that, pedophilia per se is a lifelong condition, although the propensity to act out with children may increase or decrease with age. (*See* ALJ Exh. 1 (DSM) at 699.)

41. Dr. Duncan-Hively's opinion that Rice has a "low risk of re-offending" (Hearing Tr. at 435:1-3) also failed to accurately reflect Rice's test results from the Minnesota Multiphasic Personality Inventory (MMPI) test, the only objective test that Dr. Duncan-Hively administered to Rice. (*See* Hearing Tr. (Weitl) at 670:15-671:4; *see also* Hearing Tr. (Duncan-Hively) at 413:18-20; Lake Direct Case Exh. 3, App. C.)

42. In her November 22, 2014 psychological evaluation of Rice, Dr. Duncan-Hively stated that, "[o]ur testing was an opportunity for Mr. Rice to be deceitful, obfuscate, lie, or miss-

represent [sic] himself” but that “[n]one of that was present in our assessment.” (Lake Direct Case Exh. 3, App. C, at 7).

43. In contrast, the MMPI test report stated that Rice offered responses that were favorable to him in an “intentional effort to ‘look good’ on the MMPI 2 . . . and showed an appreciable amount of conscious defensiveness, responding ‘too positively’ to many of the MMPI-2 items.” (Lake Direct Case Exh. 4 at 1-2.) The MMPI test report noted that Rice’s responses “reflect[ed] considerable guardedness and denial, a conscious avoidance of admitting any faults or improper actions that might be held against him,” and that Rice was “very cautiously self-protective as to how the test results might reflect badly on him or be used against him.” (Lake Direct Case Exh. 4 at 1-2.)

#### **IV. OTHER EVIDENCE IN THE RECORD DEMONSTRATES DEFICIENCIES IN LAKE’S CASE FOR REHABILITATION**

##### **A. The Evidence In the Record From Local Law Enforcement Demonstrates That Rice Is At High Risk To Reoffend**

44. Missouri state records prepared contemporaneously with Rice’s participation in the Missouri Sex Offender Treatment Program (MoSOP) reflect that he did not appear to have internalized the treatment concepts, doing just enough to meet the program’s requirements. (*See* EB Direct Case Exh. 4 at 8; *see also* Hearing Tr. (Weitl) 664:19-665:3.) The report prepared by the Missouri Department of Corrections at the conclusion of Rice’s participation in MoSOP, and executed by the MoSOP Clinical Supervisor (a licensed clinical social worker) and the Director of MoSOP (a licensed psychologist), concluded that, regardless of Rice’s completion of the Program, he remains at a “moderately high risk to reoffend sexually.” (EB Direct Case Exh. 4 at 10; *see also* Hearing Tr. (Weitl) at 665:5-11; 666:5-8.) This report further cautioned that

because of Rice's risk to re-offend, he should be subject to "close supervision by his parole officer and continued therapy." (EB Direct Case Exh. 4 at 10.)

45. The Bureau proffered Tamara Gremminger as an expert witness during the hearing. (See Hearing Tr. at 447:9-11.) The Presiding Judge subsequently accepted her as an expert based on her training and experience.<sup>4</sup> Ms. Gremminger is a Sex Offender Specialist in the Division of Probation and Parole, Missouri Department of Corrections and has worked in the Missouri Department of Corrections for more than twenty years. (See Gremminger Direct at ¶¶ 1-21.) Ms. Gremminger has supervised more than 2,000 sex offenders, both men and women, who have been convicted of sexually violent offenses. (See *id.* at ¶ 1; Hearing Tr. (Gremminger) at 451:18-452:9.) She supervises sex offenders whose convictions involve crimes against children, incapacitated adults, sex trafficking, prostitution, cybercrimes, child pornography, exposing themselves to minors, and possessing child pornography. (See Gremminger Direct at ¶ 1; Hearing Tr. (Gremminger) at 452:15-453:10.)

46. Before joining the Department of Corrections, Ms. Gremminger attended and graduated from the University of Missouri, where she majored in criminal justice and minored in psychology. (See Gremminger Direct at ¶ 2.) After college, she attended and graduated from the St. Charles County Law Enforcement Academy in St. Charles County, Missouri. (See Gremminger Direct at ¶ 2, Hearing Tr. (Gremminger) at 454:23-455:-19; 457:7-10.) Since then, she has spent her entire career working for law enforcement at the local and state levels.

47. While attending the St. Charles County Law Enforcement Academy, she worked in the St. Charles County, Missouri Sheriff's Department as a Corrections Officer from 1991

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<sup>4</sup> *Patrick Sullivan et al.*, Order, FCC 17M-29 (ALJ rel. Aug. 15, 2017).

until 1993. (See Gremminger Direct at ¶ 2; Hearing Tr. (Gremminger) at 455:5-7.) Since then, she has worked in the Probation and Parole Division of the Missouri Department of Corrections as a parole officer in the position of Sex Offender Specialist. (See Gremminger Direct at ¶ 2.)

48. As a Sex Offender Specialist, Ms. Gremminger's primary responsibilities involve supervising the probation and parole of sex offenders, including their reentry into the community. (See Gremminger Direct at ¶ 2; Hearing Tr. (Gremminger) at 452:15-22.) In this capacity, she has received both on the job training and attended numerous classes which aid her in performing sex offender risk assessments. (See Gremminger Direct at ¶¶ 5-6; Hearing Tr. (Gremminger) at 452:2-14.) She performs sex offender risk assessments regularly and testifies frequently for the state of Missouri in proceedings involving the risk of re-offense of sex offenders like Rice. (See Hearing Tr. (Gremminger) at 485:4-487:17.)

49. Ms. Gremminger is a representative of local law enforcement in Missouri. (See Gremminger Direct at ¶¶ 1-7.)

50. At the Bureau's request, Ms. Gremminger performed a risk assessment regarding Rice. (See Gremminger Direct at ¶ 17; Hearing Tr. (Gremminger) at 505:3-6.) To perform this assessment, Ms. Gremminger reviewed Dr. Duncan-Hively's report dated November 22, 2014; the data included in Mr. Rice's sex offender registry (employment, home, car, etc.); and the probation and parole records kept by the Probation and Parole Division of the Missouri Department of Corrections. (See Gremminger Direct at ¶ 8, ¶ 15; Hearing Tr. (Gremminger) at 502:19-503:6; 503:22-23, 25-504:7.)

51. When Rice was on parole, he was required to undergo sex offender treatment that consisted of "a community-based treatment program conducted by a provider approved by the Department of Corrections whose therapy is based on standards outlined by the Association for

the Treatment of Sexual Abusers.” (Gremminger Direct at ¶ 10.) Ms. Gremminger noted that the doctor from whom Rice apparently received this therapy, Dr. Robinson, was not qualified to provide the treatment offered. (See EB Direct Case Exh. 12 at 20; Gremminger Direct at ¶ 11.) While Rice was participating in group therapy with Dr. Robinson, the state of Missouri removed Dr. Robinson from the approved therapist list. (See Hearing Tr. (Rice) at 339:9-340:16.)

52. Because Rice did not receive sex offender treatment during parole from a state-approved therapist, Ms. Gremminger questioned whether he received adequate therapy. (Gremminger Direct at ¶ 11.) She further testified that Rice’s “failure to obtain proper therapy is a factor undermining any claim that he is currently rehabilitated.” (*Id.*)

53. Rice’s parole officer believed that the risk of Rice having participated in therapy that did not necessarily live up to the state’s standards would be mitigated by a second polygraph examination at the end of his parole. (See EB Direct Case Ex. 12 at 21.) This second “end of parole” polygraph examination would explore Rice’s “management of any deviant thoughts and fantasies since the date of his conviction,” and “compliance with supervision plans involving treatment and the conditions of probation and parole.” (Gremminger Direct at ¶ 12.) Rice never took this “end of parole” polygraph examination. (See Hearing Tr. (Rice) at 319:4-8.)

54. Even though this second polygraph test was part of Rice’s conditions of parole, Rice admitted that he did not take the test because he had a letter from his doctor excusing his participation. (See Hearing Tr. at 319:10-16.) Rice did not produce this letter into evidence, notwithstanding the Presiding Judge’s order to do so. (See Hearing Tr. at 321:1-9.)

55. Ms. Gremminger concluded that Rice’s failure to complete this “end of parole” polygraph examination “undermines any claim that he is currently rehabilitated.” (Gremminger Direct at ¶ 12).



56. Ms. Gremminger also scored Rice using the Static-99 test. The Static 99 is an actuarial test used by the Probation and Parole Division of the Missouri Department of Corrections to predict recidivism. (*See* Gremminger Direct at ¶ 16). The test considers nine factors to which a score is attributed. (*See* 414:16-21.) The cumulative total identifies the individual as a low risk, medium risk, or high risk for recidivism. (*See id.*) Ms. Gremminger testified that although the Static-99 test produced an initial score of moderate-low risk to re-offend, when she looked at other risk factors and protective factors present, she concluded that the Static 99 test calculated Rice's risk of recidivism as too low. (*See* Gremminger Direct at ¶ 16.)

57. Ms. Gremminger recognized that even when an ex-offender is almost 76 years old and has not reoffended in more than 25 years, these factors alone are not dispositive on the question of whether he will reoffend. (*See* Hearing Tr. (Gremminger) at 487:8-17.) Instead, "you have to look at all the programs they've been through, the responsibility they've taken, the tests, and the therapy. So it's not just . . . their age. You have to look at . . . the whole picture to bring the puzzle together." (*See* Hearing Tr. (Gremminger) at 487:8-17; 502:25-503:6.) After considering factors such as Rice's police reports, polygraph testing, sex offender treatment, his status on the sex offender registry, his lack of some regular employment, family or other close relationships, and his continued drinking, Ms. Gremminger concluded that Rice presents a "substantial risk" to re-offend. (*See* Gremminger Direct at ¶¶ 16-17; Hearing Tr. (Gremminger) at 503:25-503:6; 503:22-23.)

**B. The Medical Opinion From The Only Expert Psychologist With A Specialization In The Evaluation Of Sex Offenders And Their Likelihood To Reoffend Concluded Rice Is At High Risk to Reoffend**

58. In Missouri, probation and parole officers work in partnership with expert psychologists to perform sex offender risk assessments. (*See* Hearing Tr. (Weitl) at 570:22-571:23.) The Bureau's expert, Dr. Kimberly Weitl, is a licensed psychologist in Missouri and Illinois, and is licensed as a Sex Offender Evaluator and Sex Offender Treatment Provider in Illinois. (*See* EB Direct Case Exh. 7 at 1; Hearing Tr. (Weitl) at 558:24-25-559:3.) She has been practicing as a licensed psychologist providing sex offender evaluations and risk assessments since she graduated with a Doctorate of Clinical Psychology from Argosy University (formerly the Illinois School of Professional Psychology) in 2002. (*See* EB Direct Case Exh. 1: Written Direct Testimony of Dr. Kimberley Weitl (Weitl Direct) at ¶ 1.)

59. Ms. Becky Shaffar, a prosecuting attorney in the St. Charles, Missouri District Attorney's office, and Mr. Monty Plask, from the Sexually Violent Predators Section of the Missouri Attorney General's Office, recommended Dr. Weitl to the Bureau because she is familiar with, and has performed, sex offender risk assessment evaluations and procedures recognized by local law enforcement in Missouri. (*See* Weitl Direct at ¶ 2.)

60. Since May 2007, Dr. Weitl has worked with the Illinois Department of Human Services conducting evaluations of sex offenders. (*See* Weitl Direct at ¶ 4; Hearing Tr. (Weitl) at 560:19-23.) In this capacity, she has testified on behalf of the state at more than 90 proceedings before numerous state circuit courts regarding a sex offender's status as a Sexually Violent Person (based on a risk to re-offend and mental disorder) and his or her continued need for institutional sex offender treatment, conditional release into the community, or discharge. (*See* Weitl Direct at ¶ 4.) She has also testified on behalf of the defense on approximately 12 occasions when an offender was, in her opinion, rehabilitated and/or no longer met the criteria for civil commitment. (*See* Weitl Direct at ¶ 4.)

61. In addition to her work for the state of Illinois, Dr. Weitzl prepares sex offender evaluations for the Missouri Attorney General and the Iowa Attorney General. (See Weitzl Direct at ¶ 5; Hearing Tr. (Weitzl) at 560:24-561:2.) She has testified as an expert witness for the Missouri Attorney General's office approximately 100 times, in addition to testifying in many depositions. (See Weitzl Direct at ¶ 5.) Dr. Weitzl has performed more than 300 sex offender risk assessments in the last 6 months. (See Hearing Tr. (Weitzl) at 624:2-10.) She is also a member of the Association for the Treatment of Sexual Abusers and attends their annual international conventions. (See Weitzl Direct at ¶ 5; Hearing Tr. (Weitzl) at 612:19-21.)

62. Between March 2005 and May 2012, Dr. Weitzl worked for the Missouri Department of Corrections/Missouri Sex Offender Program (MoSOP) conducting "end-of-confinement" evaluations of men and women convicted of sexually violent offenses to determine their status as Sexually Violent Predators through risk assessment and the presence/absence of mental abnormality. (See Weitzl Direct at ¶ 6; Hearing Tr. (Weitzl) at 560:4-18.) Her evaluation methods included clinical interviews, file reviews, and the use of actuarial assessment instruments such as the Static-99R and the Static-2002R tests, the Minnesota Sex Offender Screening Tool, Revised (MnSOST-R), the Hare Psychopathy Checklist - Revised and Screening Version, and the Personality Assessment Interview (PAI). (See Weitzl Direct at ¶ 6.) She also evaluated sex offenders sentenced to the 120-day/Sex Offender Assessment Unit for their risk to re-offend and their amenability to treatment. (See Weitzl Direct at ¶ 6.) In addition, she supervised clinical staff and assisted in the development of the Missouri Sex Offender Treatment Program (MoSOP). (See Weitzl Direct at ¶ 6; Hearing Tr. (Weitzl) at 563:5-564:1.) At times, she also served as the acting MoSOP director. (See Weitzl Direct at ¶ 6; Hearing Tr. (Weitzl) at 564:18-23.)

63. She also worked as a staff psychologist for the Missouri Department of Corrections/Social Rehabilitation Unit from August 2002 until March 2004. (See Weitzl Direct at ¶ 7; Hearing Tr. (Weitzl) at 560:1-10.) In this role, she provided therapy and assessed the mental health status of approximately 85 chronically, mentally ill offenders. (See Weitzl Direct at ¶ 7; Hearing Tr. (Weitzl) at 559:25-560:10.)

64. At the hearing, the Presiding Judge accepted Dr. Weitzl as an expert. (See Hearing Tr. (Weitzl) at 581:18.)

65. At the Bureau's request, Dr. Weitzl performed a sex offender risk assessment of Rice. (See Weitzl Direct at ¶¶ 2-3; Hearing Tr. (Weitzl) at 568:6-15; 648:20-649:8.) She followed the protocols used by local law enforcement in Missouri and by other experts in her field to do her assessment. (See Hearing Tr. (Weitzl) at 568:6-15.)

66. Dr. Weitzl conducted a 1.5 hour clinical interview of Rice in December 2015. (See Weitzl Direct at ¶ 12.) She also reviewed Rice's file maintained by the Missouri Department of Corrections, Division of Probation and Parole. (See Weitzl Direct at ¶ 8.) Dr. Weitzl also conducted examinations of Rice using the Static-99R and the Static-2002R statistical tests. (See Weitzl Direct at ¶¶ 47-50.)

67. She then considered risk factors (deviant sexual interests, global intimacy deficits, emotional identification with children, does not see self as risk, attitudes supportive of sexual offense, impulsive lifestyle, any personality disorder, substance abuse/intoxicated during commission of offense) and protective factors (including success in sex offender treatment program, offender's age, and or his or her health) which are identified in literature published by researchers in the field as predictive to determine if the Static-99R and Static 2002R scores

accurately reflected his risk. (See EB Direct Case Exh. 6 at 18-19; Weitzl Direct at ¶¶ 51-65; Hearing Tr. (Weitzl) at 614:18-615:1.)

68. Based on her interview of Rice and her review of his files (both those provided by Rice and by the Missouri Department of Corrections), Dr. Weitzl concluded that Rice's sex offender treatment was unsuccessful and that Rice has never accepted responsibility for his offenses – two critical factors in assessing rehabilitation. (See Weitzl Direct at ¶ 3.) Dr. Weitzl also concluded that Rice presents a high risk to re-offend. (See Weitzl Direct at ¶ 66.)

**1. Rice Suffers From At Least Four Mental Disorders**

69. Dr. Weitzl concluded that Rice suffers from at least four mental disorders, each of which increases the likelihood that Rice will continue to experience sexually deviant urges and re-offend. (See Weitzl Direct at ¶¶ 35-44.)

70. In particular, Dr. Weitzl concluded that Rice meets the criteria for pedophilia, a chronic and life-long sexual disorder from which Rice cannot be "cured." (See Weitzl Direct at ¶ 36.) As Dr. Weitzl testified, "[a]n individual suffering from this disorder has had sexual fantasies, urges or behaviors involving children (typically aged 13 or younger) for at least six months. The individual has experienced personal distress regarding these urges or fantasies; or they have acted on the urges, causing personal distress to another." (Weitzl Direct at ¶ 36.)

71. Dr. Weitzl also concluded that Rice suffers from Hebephilia, a disorder that exists when an individual has demonstrated a pattern of sexual fantasies, urges or behaviors involving non-consenting persons, and these urges have resulted in personal distress and/or they have acted on these urges, resulting in personal distress in another. (See Weitzl Direct at ¶¶ 38-39.) Rice also suffers from narcissistic personality disorder and alcohol abuse disorder. (See Weitzl Direct at ¶¶ 38-44.)

72. Lake offered no evidence to demonstrate how Rice keeps any of these mental disorders in check. He is no longer engaged in any therapy and he no longer takes any medication for his array of mental disorders, except a mild antidepressant, Wellbutrin. (See Lake Direct Case Exh. 1 at 4.)

## **2. Rice Refused To Take Responsibility For His Actions**

73. Dr. Weitz testified that, during her clinical interview of Rice, he repeatedly explained away his actions as the result of his use of “alcohol, his apparent mental illness, and [his] stress from overworking. In addition, he excused his behavior by indicating that ‘the victims enjoyed the abuse,’ ‘the abuse wasn’t planned,’ and ‘the victims were ‘street kids.’” (See Weitz Direct at ¶¶ 23, 54, 64.)

74. Dr. Weitz further testified that Rice still does not appear to understand that his sexual abuse of children was wrong or criminal. (See Weitz Direct at ¶ 55.) Indeed, Dr. Weitz noted that during her interview with Rice, he “denied pleading guilty to the charges filed against him, explaining how he had instead ‘stipulated’ to the charges during a ‘bench trial.’” (Weitz Direct at ¶ 27.) He suggested to Dr. Weitz that “stipulating to an offense was similar to an ‘Alford Plea (sic),’ where the individual does not have to admit guilt.” (Weitz Direct at ¶ 27.) In Dr. Weitz’s estimation, this represents further evidence of Rice’s failure, and indeed unwillingness, to accept responsibility for the actions that resulted in his conviction, and the revocation of his previous Commission licenses. (See Weitz Direct at ¶ 27.)

75. As Dr. Weitz pointed out in her testimony, Rice continues to blame his sexually deviant behavior on things beyond his control, such as mental illness, alcohol, and overworking. She concludes that offenders, such as Rice, “who do not acknowledge their continued risk, no

matter how small, are at a greater risk to reoffend because they will not take the appropriate precautions to assure they will not reoffend.” (Weitl Direct at ¶ 54.)

### **3. Rice’s Therapy Was Unsuccessful**

76. Dr. Weitl concluded that Rice’s sex offender treatment was “insufficient and ineffective.” (See Weitl Direct at ¶ 3.) During her clinical interview of Rice, for example, he was unable to explain the basic components of his treatment, such as the type of sexual offenses for which he was incarcerated or his relapse prevention plan. (See Weitl Direct at ¶¶ 28-30, 60.)

77. Dr. Weitl concluded that Rice failed to gain any apparent insight during his sex offender treatment (see Hearing Tr. (Weitl) at 604:17-21), *e.g.*, into how the depression he claims to suffer from – and on which he blames his sexual offenses – was associated with his sexually deviant behavior. (See Weitl Direct at ¶¶ 29, 60.)

78. Dr. Weitl was also concerned that the sex offender treatment program in which Rice was enrolled while on parole was provided by an unlicensed provider who was removed from Missouri’s approved sex offender treatment provider list. (See Weitl Direct at ¶ 63.) As Dr. Weitl testified, “[t]his raises serious doubts about the quality of treatment Mr. Rice was provided.” (Weitl Direct at ¶ 63.)

79. Dr. Weitl noted that Rice’s refusal to disclose and take responsibility for his behavior is additional evidence that his sex offender treatment was not successful. As she testified, “full disclosure of – and admission to – one’s past behavior is a basic component of sex offender treatment.” (Weitl Direct at ¶ 64; Hearing Tr. (Weitl) at 672:18-673:8). She added that Rice’s continual denial of and or his minimization of his sexually offending behavior is “more reflective of someone who had never participated in sex offender treatment.” (Weitl Direct at ¶

64.) Dr. Weitzl further opined that honest recognition of one's condition is an essential component of treatment. (*See* Hearing Tr. (Weitzl) at 672:23-673:8.)

**4. Awarding Rice Commission Licenses Would Raise a Substantial Risk of Re-Offense**

80. Rice admitted that he talked to his victims about his radio station ownership and about his career in broadcasting, which he believed they admired. (*See* Hearing Tr. (Rice) at 255:13-17.) Rice utilized the stereo equipment, CDs, videos and knowledge and experience he gained from working in broadcast to entice and manipulate his victims. (*See* EB Direct Case Exh. 4 at 20-21, 29.) He also promised some of his victims jobs as disc jockeys at his stations when they got older. (*See* EB Direct Case Exh. 4 at 21.)

81. Rice admitted that he brought one of his victims to a radio transmitter building he owned. (*See* Hearing Tr. (Rice) at 278:1-5.) The victim claimed that Rice forced him to have sex there. (EB Direct Case Exh. 4 at 12-13.)

82. Dr. Weitzl opined that by granting Rice a license, the Commission would put Rice "in exactly the same position as he held previously at the time of his offenses, *i.e.*, that of a radio station owner and operator who used his status" to "groom impressionable young boys for his sexual gratification, through the promise of jobs in radio broadcasting." (Weitzl Direct at ¶ 3.) She also testified that she was concerned that Rice generally used his status as a broadcaster to groom children. (*See* Hearing Tr. (Weitzl) at 646:15-23.) Dr. Weitzl specified that through station ownership, Rice attained the status of what the Presiding Judge called a "superman" in communications, with the kind of attractiveness and allure to children that produced Rice's opportunities to victimize them. (*See* Hearing Tr. (Weitzl) at 644:17-645:6, 14-18.)

83. Ms. Gremminger expressed similar concerns. (*See* Hearing Tr. (Gremminger) at 517:3-17, 517:22-518:7.) Like Dr. Weitzl, she maintained that it was his radio station ownership



and the “prestige myth” that accompanied it, which made Rice attractive to young boys, regardless of the kind of license he obtains. (*See id.*)

## PROPOSED CONCLUSIONS OF LAW

### I. LEGAL STANDARDS

84. The Commission is obligated, pursuant to Section 310(d) of the Communications Act of 1934, as Amended (Act),<sup>5</sup> to approve the grant of a Commission license when the Commission finds that the “public interest, convenience, and necessity would be served,”<sup>6</sup> and an important part of the public interest inquiry is the potential licensee's character.<sup>7</sup>

85. Under the Commission's policy concerning character qualifications, non-FCC misconduct may raise a substantial and material question of fact concerning a licensee's character. (*See* EB Official Notice Exh. 7 at 1195, ¶ 34.)<sup>8</sup> In assessing character qualifications in broadcast licensing matters, the Commission considers, as relevant, “evidence of any conviction for misconduct constituting a felony.” (*See* EB Official Notice Exh. 9 at 3252.) In particular, the Commission has found that “[b]ecause all felonies are serious crimes, any

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<sup>5</sup> *See* 47 U.S.C. § 310(d).

<sup>6</sup> 47 U.S.C. § 309(a).

<sup>7</sup> *See* 47 U.S.C. § 308(b) (“[a]ll applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, ... and other qualifications of the applicant to operate the station”); *see also* EB Official Notice Exhibits Nos. 7 and 8 (*Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986) (“1986 Policy Statement”), *recon. dismissed/denied*, 1 FCC Rcd 421 (1986)).

<sup>8</sup> *See also* EB Official Notice Exh. 9, *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (“1990 Policy Statement”), *modified*, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991), *further modified*, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992).

conviction provides an indication of an applicant's or licensee's propensity to obey the law” and to conform to provisions of both the Act and the agency's rules and policies. (*Id.*) In addition, conviction of certain felonies involving “misconduct so egregious as to shock the conscience and evoke almost universal disapprobation . . . might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee.” (EB Official Notice Exh. 7 at 1205 n. 60.)

86. In affirming the Commission’s revocation of Rice’s prior authorizations, (*See* EB Official Notice Exh. 14-16) the U.S. Court of Appeals for the District of Columbia Circuit opined that with regard to sexual offenses involving minors:

whatever the issue with respect to crimes that might be regarded as being on the boundary of “egregiousness,” the reasonableness of the FCC’s decision in the instant case is clear. There is no question but that the crimes at issue here are, as the FCC found, “characterized by moral turpitude” to such an extent that they “fall[] in the category of those that ‘shock the conscience’ and summon almost universal disapproval,” . . . a category that the FCC expressly warned would be the subject of special agency concern.

(EB Official Notice Exh. 16 at 192.)

87. As the applicant, Lake/Rice has the burden of proceeding and the burden of proof. (EB Official Notice Exh. 2 at 5430, ¶ 28.) As such, Lake/Rice has the burden of establishing by a preponderance of the evidence that (i) Rice (and therefore, Lake) can be relied upon to be truthful, candid, and forthcoming in his dealings with the Commission, and to comply in all other respects with the Commission’s rules, regulations, and policies; and/or (ii) Rice has been rehabilitated to an extent that promotes confidence that he will refrain from engaging in the behavior for which he was convicted, or there exist the “extraordinary and compelling circumstances” to overcome the public interest concerns associated with Rice’s child sex abuse crimes. (EB Official Notice Exh. 2 at 5429, n. 60.)

88. Whether an applicant has been rehabilitated will necessarily turn on the facts of each case. In the *1990 Character Policy Statement*, the Commission stated that it will consider, among other factors,

(1) whether the applicant has . . . been involved in any significant wrongdoing since the alleged misconduct occurred; (2) how much time has elapsed since the misconduct; (3) the applicant's reputation for good character in the community; and (4) meaningful measures taken by the applicant to prevent the future occurrence of misconduct.

(EB Official Notice Exh. 9 at 3252 n. 4 (internal citation omitted).)

Due to "the known risks of . . . radio[] [licenses] in the hands of sex offenders," (EB Official Notice Exh. 13 at 14069, ¶ 11), when considering the rehabilitation of a convicted child sex offender, the Commission will also consider medical evaluations, the testimony of character witnesses, and the convicted sex offender's expression of contrition, if any. (See EB Official Notice Exhibit No. 13 at 14074, ¶ 18.) In addition, the Commission will defer to the local law enforcement's determination regarding the sex offender's ongoing risk to the community. (See *id.* at 14073, ¶ 15.) As the Commission has further recognized, "[g]iven the greater expertise of local authorities in evaluating the risks that sex offenders pose to their communities," (*id.* at 14073, ¶ 16) local law enforcement is "better positioned to make the determination whether an individual poses a danger to the community than is the Commission." (*Id.* at 14073, ¶ 15.)

## **II. LAKE DID NOT MEET ITS BURDEN OF PROOF ON THE QUESTION OF RICE'S TRUTHFULNESS WITH THE COMMISSION**

89. Pursuant to the HDO, Lake was required to prove, by a preponderance of the evidence that Rice (and therefore, Lake) can be relied upon to be truthful, candid, and forthcoming in his dealings with the Commission, and to comply in all other respects with the Commission's rules, regulations, and policies. Lake/Rice failed to offer any evidence in the record to meet this burden.

### **III. LAKE DID NOT MEET ITS BURDEN OF PROOF ON THE QUESTION OF RICE'S REHABILITATION**

90. Pursuant to the HDO, Lake was required to prove, by a preponderance of the evidence, that Rice has been rehabilitated to an extent that the Commission can be fully confident Rice will refrain from engaging in the kind of behavior for which he was convicted. (EB Official Notice Exh. 2 at 5429, ¶ 21.) Lake failed to meet this burden.

#### **A. Rice's Sex Abuse Crimes Are Egregious And Shock The Conscience**

91. Rice's crimes at issue here are "characterized by moral turpitude" to such an extent that they "fall[] in the category of those that 'shock the conscience' and summon almost universal disapproval." (EB Official Notice Exh. 2, at 5429, ¶ 21.)

92. Rice was convicted of six counts of Deviate Sexual Assault in the First Degree, involving oral sex with a male child between the ages of 14 and 16 years old, two counts of Deviate Sexual Assault in the Second Degree, involving oral sex with a male child 16 years old, and four counts of Sodomy involving deviate sexual intercourse with a male child under the age of 14 years old. (See EB Direct Case Exh. 10 at 2-6.) Based on the records acquired from the Missouri Department of Corrections, Rice committed these crimes by grooming neighborhood children for sex by luring them into his house, giving them alcohol and marijuana, buying them expensive gifts, and driving them around in his red corvette. (See EB Direct Case Exh. 4 at 12-13.) At the hearing, Rice admitted to having sex with one of his victims "several times a week," every week for five years, totaling approximately 750 separate occasions. (See EB. Exh. 4 at 18; Hearing Tr. (Rice) at 289:9-15; 291:18-25; 292:2-4; 293:8-20.)

93. Rice's crimes thus involve misconduct that the Commission has expressly warned would be the subject of special agency concern and, by their very nature, "constitute *prima facie*

evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee.” (EB Official Notice Exh. 7 at 1205 n. 60.)

**B. Rice’s Letters of Reference Are Inadmissible Hearsay And Are Of No Probative Value On The Question Of His Good Character In The Community**

94. Among other factors, the Commission has recognized that when an applicant has been convicted of a felony, it will consider the testimony of character witnesses and the applicant’s reputation for good character in the community. (See EB Official Exh. 9 at 3252 n. 4 (internal citation omitted)).) The six letters of reference that Lake offers from various “acquaintances and business associates of Mr. Rice” (see Lake Direct Case Exh. 1, App. C) are out-of-court statements offered by Lake for the very purpose of proving the truth of the matter therein asserted, *i.e.*, that “Mr. Rice is honest, is respected in the community, is a changed man, has achieved extraordinary rehabilitation and good standing in [the community], and fully complies with all FCC and FAA regulations in the current maintenance and operation of his communications towers.” (Lake Direct Case Exh. 1, App. C.)<sup>9</sup> None of the authors of these letters testified at the hearing. Accordingly, these six letters are inadmissible and, even if admitted, are of no probative value to the question of whether Rice has been rehabilitated.

95. These six letters of reference are entitled to little weight because they lack any detail or corroborating evidence that would indicate reliability. They are generated by “acquaintances and business associates of Mr. Rice” who do not appear to have any intimate knowledge of Rice’s sexual orientation or patterns of offensive behavior against children. (See

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<sup>9</sup> See Fed. R. Evid. 801. See also 47 C.F.R. § 1.351 (“Except as otherwise provided in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings.”).

Lake Direct Case Exh. 1, App. C.) As the Bureau's expert psychologist, Dr. Weitzl, explained, collateral sources of information, such as "written letters of reference," do not "give negative information," such as whether the individual is "sexually attracted to children," because an acquaintance or business associate will not "really know that unless they have seen them molest a child," and accordingly, "I am not going to get much information about risk from [such letters]." (Hearing Tr. (Weitzl) at 673:22-674:-8.) As evidence of Dr. Weitzl's concerns, one of the letters indicates such a deficit of knowledge about Rice's patterns of offending that the author placed his underage minor children alone under Rice's supervision, putting his own children in harm's way and Rice at risk of re-offending. (See Lake Direct Case Exh. 1, App. C.)

**C. Lake Did Not Meet Its Burden Of Showing That Rice Has Taken Meaningful Measures To Prevent Future Misconduct**

96. The Commission has recognized that when an applicant has been convicted of a felony, it should also consider the measures that the applicant has taken to prevent future misconduct. (See EB Official Exh. 9 at 3252 n. 4 (internal citation omitted)). The evidence in the record does not demonstrate that Rice has taken the necessary steps to avoid placing himself in a position where he is likely to re-offend. Notably, while Rice continues to blame his sexually deviant behavior on an "undiagnosed mental condition," (Hearing Tr. (Rice) at 223:4-15), various mental disorders, (see Hearing at Tr. (Rice) 224:16-19; 225:1-11, 294:12-24), and his use of alcohol (see Hearing Tr. (Rice) at 209:6-12), he admitted that he has not received any therapy or monitoring from a mental health provider for many years. (See Hearing Tr. (Rice) at 298:18-20; 299:6-18.) He also admitted that he continues to engage in social drinking and that he is not currently receiving any treatment for alcohol abuse. (See Hearing Tr. (Rice) at 209:13-23; 299:22-24; 300:12-15; see also Lake Direct Case Exh. 3, Appendix C at 4.) Most alarmingly, the record shows that Rice has a long history of denying his pedophilic tendencies (see, e.g.,

Weitl Direct at ¶ 25-26) – which he continues to do (*see* Hearing Tr. (Rice) at 351:14-24) – thereby heightening the risk that he will place himself into a position to re-offend through lack of awareness and foresight. (*See* Weitl Direct at ¶¶ 22, 54, 66).

**D. Rice Has Not Taken Responsibility For His Criminal Actions**

97. When the underlying criminal conviction involves sexual offenses against a child, the Commission will also consider whether the convicted sex offender has taken responsibility or expressed contrition for his crimes. (*See* EB Official Notice Exh. 13 at 14074, ¶ 18.) The evidence in the record does not demonstrate that Rice has taken responsibility for his criminal acts.

98. In his direct written testimony, for example, Rice does not even mention that his convictions are for sex crimes against children, (*see* Lake Direct Case Exh. 1 at 2), much less express remorse for the harm and suffering he caused his young victims. (*Id.*) The record reflects that Rice still refuses to acknowledge the deep psychological harm – resulting in protracted hospitalizations, mental disorders, and disability – that he caused his victims. (*See* Weitl Direct at ¶¶ 25, 55; EB Direct Case Exh. 4 at 26, 30, 31.) Rice still considers his victims to be willing participants who manipulated him when they came to his apartment to engage in sexual activities. (*See* Hearing Tr. (Rice) at 288:10-13; 289:1-5). He also accused at least one of his victims of falsifying allegations about sex abuse for the purpose of making a civil claim for money. (*See* Hearing Tr. (Rice) 281:13-15; 282:18-284:4; 284:23-285:6). Rice did not cite to any corroborating evidence for these claims and, indeed, they are contradicted by substantial evidence in the record. (*See* EB Direct Case Exh. 4 at 13, 31-32.) Moreover, when questioned by the Bureau’s expert psychologist about what kind of psychological harm he had caused his victims, Rice replied, “I don’t know, you’d have to ask them.” (Weitl Direct at ¶ 28.) This

evidence demonstrates that despite the passage of time, Rice still does not appreciate the criminality of his past behavior or its devastating effects upon his victims.

**E. The Only Psychological Expert With A Specialization In The Evaluation Of Sex Offenders Concluded Rice Is At High Risk To Reoffend**

99. In sex offender cases such as this, the Commission will also consider medical opinions concerning an applicant's likelihood of reoffending. (*See* EB Official Notice Exh. 13 at 14074, ¶ 18.) The only medical expert with expertise in the area of sex offender risk assessment is the Bureau's expert, Dr. Kimberly Weitzl, who concluded that Rice poses a significant risk of re-offense. Lake's expert, Dr. Duncan-Hively, admitted that she is an "outside consultant," and not an expert in sex offender risk assessment. (*See* Hearing Tr. (Duncan-Hively) at 397:4-13.) She also admitted that Dr. Weitzl "is eminently more qualified" than she is in this area and that she does not have anywhere near the experience in conducting sex offender risk assessments or with the MoSOP program as does Dr. Weitzl. (*See* Lake Direct Case Exh. 1, App. A.; Hearing Tr. (Duncan-Hively) at 397:8-13; EB Direct Case Exh. 7.)

100. Dr. Duncan-Hively is a clinical psychologist whose specialty centers on "trauma and transition," (Hearing Tr. (Duncan-Hively) at 387:23-25), and not on the evaluation of sex offenders. (*See* Lake Direct Case Exh. 3.) Indeed, sex offender evaluation comprises only 6-8% of Dr. Duncan-Hively's practice. (*See* Hearing Tr. (Duncan-Hively) at 392:15-394:3). In contrast, Dr. Weitzl conducts sex offender risk assessments as the primary focus of her practice and has performed more than 300 sex offender risk assessments in the last 6 months. (*See* Hearing Tr. at (Weitzl) at 624:2-10.) Thus, Dr. Duncan-Hively's conclusion that Rice is at a low risk to reoffend should be given little probative weight.



**F. Lake Did Not Offer Any Opinion From Local Law Enforcement Concerning Rice's Ongoing Risk to The Community**

101. In assessing a convicted felon's qualifications to be a licensee, the Commission will also consider the local law enforcement's opinion on the applicant's likelihood of recidivism. (See EB Official Notice Exh. 13 at 14073, ¶¶ 15-16; 14074, ¶ 18.) The Presiding Judge has opined that the Commission's policy is to recognize by comity the expertise of local law enforcement with regard to sex offenders.<sup>10</sup> (Cf. EB Official Notice Exhibit 13 at 14072) ("[L]ocal authorities responsible for keeping the peace and enforcing the law are better positioned to make the determination whether an individual poses a danger to the community than is the Commission. . . It is especially appropriate to defer to state judgments about sex offenders, in view of the fact that many states treat sex offenders differently from other felons.") (footnote omitted)). The only evidence in the record from local law enforcement – presented by the Bureau – demonstrates that Rice represents a significant ongoing risk to the community. (See Gremminger Direct at ¶¶ 1-17; Weitzl Direct at ¶¶ 1-6.) Moreover, both of the Bureau's experts, who represent the views of local law enforcement in this matter, arrived at their conclusions that Rice presents a significant risk to reoffend in the community, independent of each other. Commission precedent provides that their opinions should be afforded substantial deference on the question of Rice's risk to re-offend.<sup>11</sup>

**G. Granting A Broadcast License To Lake Will Enhance Rice's Ability To Re-Offend**

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<sup>10</sup> *Patrick Sullivan et al.*, Order, FCC 17M-22 (ALJ, rel. Apr. 27, 2017).

<sup>11</sup> See EB Official Notice Exhibit No. 13 at 14073, ¶ 15.

102. Granting Lake a broadcast license will place Rice back in the same position he was in when he was convicted of child molestation. The record reflects that Rice used the trappings from his station ownership, such as stereo equipment and CDs, to groom children for sex. (See EB Direct Case Exh. 4 at 20-21). The Bureau's witness, Ms. Gremminger, explained that it is the "prestige myth" associated with Rice's radio station ownership which helped make him attractive to young boys. (See Hearing Tr. (Gremminger) at 517:3-17; 517:22-518:7; 518:13-22.) In fact, Rice admitted that he believed some of his victims admired him because he owned radio stations (see Hearing Tr. (Rice) at 255:13-18) and the record reflects that he assaulted at least one of the victims at a radio relay station building. (See EB Direct Case Exh. 4 at 12-13.)

103. According to Dr. Weitzl, by granting Lake a radio license, the Commission would be placing Rice "in exactly the same position as he held previously at the time of his offenses, *i.e.*, that of a radio station owner and operator who used his status" to "groom impressionable young boys for his sexual gratification, through the promise of jobs in radio broadcasting." (Weitzl Direct at ¶ 3.)

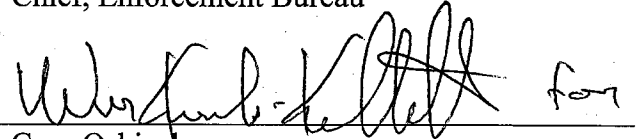
### CONCLUSION

For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge find that Lake has failed to prove, by a preponderance of the evidence, that (i) Lake/Rice will be truthful in their dealings with the Commission; and (ii) Rice has been sufficiently rehabilitated from the disqualifying acts for which he was convicted and for which his prior Commission licenses were revoked such that he now has the qualifications to be a Commission licensee. Accordingly, the Bureau respectfully requests that the Presiding Judge accept the Bureau's Findings of Fact and

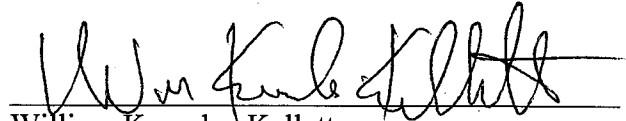
Conclusions of Law and find that both Lake Broadcasting Inc. and Michael S. Rice lack the qualifications to be a Commission licensee.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read "Gary Oshinsky", written over a horizontal line.

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May 10, 2018

## CERTIFICATE OF SERVICE

William Knowles-Kellett, an attorney in the Enforcement Bureau's Investigations & Hearings Division, certifies that he has on this 10th day of May, 2018, sent by first class United States mail and by email copies of the foregoing ENFORCEMENT BUREAU'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW to:

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And caused a copy of the foregoing to be served via hand-delivery to:

The Honorable Richard L. Sippel  
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